

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE OUTPATIENT MEDICAL CENTER  
EMPLOYEE ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

Master Docket No. 1:21-cv-00305-SRH-YBK

**JOINT STATUS REPORT RE: UPDATE  
ON FACT DISCOVERY**

The Court's June 7, 2024 Order (Dkt. No. 415) directed the parties to file a Joint Status Report concerning: (1) depositions completed since June 7, 2024; and (2) confirmed deposition dates for Joseph Clark, Brian Mathis, Andrew Johnston, Robert Chipman, Laura Mildenerger, and Jimmy Tanner. The parties also address additional depositions requested by Plaintiffs and third-party discovery.

**I. Depositions Completed between June 7, 2024, and July 26, 2024**

The parties have completed nine depositions between June 7, 2024, and July 26, 2024:

(i) Shannon McGarry on June 11, 2024; (ii) Cindy English on June 12, 2024; (iii) James "Skip" Thurman on June 17, 2024; (iv) Anthony Martin on June 27, 2024; (v) Michael Loiacano on June 28, 2024; (vi) Bridie Fanning on July 17, 2024; (vii) Allen Spradling on July 18, 2024; (viii) Alex Bateman on July 19, 2024; and (ix) James Walker on July 23, 2024.

**II. Deposition Status of Deponents Listed on Dkt. No. 415**

The parties have confirmed all depositions noted on Dkt. No. 415 for the following dates:

- Laura Mildenerger, July 30, 2024;
- Jimmy Tanner, July 31, 2024;
- Robert Chipman, August 7, 2024;
- Brian Mathis, August 13, 2024;

- Andrew Johnston, September 6, 2024; and
- Joseph Clark, September 11, 2024.

On July 24, 2024, Plaintiffs requested that Defendants agree to postpone the deposition of Brian Mathis, in light of Plaintiffs' related motion to compel regarding documents from SCA that remains pending. Defendants will meet and confer with Plaintiffs about this request. In compliance with Dkt. No. 408, the parties will not change the date of the deposition without leave of Court.

### **III. Additional Depositions Requested by Plaintiffs**

#### **A. Defendants' Statement**

On March 22, 2024, the Court ordered that Plaintiffs could issue up to 10 notices of deposition or deposition subpoenas after March 28, 2024, "but in all events before 8/1/[]2024 with confirmed dates for the depositions." Dkt. No. 376.

On July 24, 2024, one week before this deadline, Plaintiffs for the first time informed SCA of their intent to depose eight additional current or former SCA employees: (i) Walker Badham; (ii) Timothy Buono; (iii) Warren Cinnick; (iv) Tony Kilgore; (v) Bill Linder; (vi) Jennifer Sandoz; (vii) Jennifer Simmons;<sup>1</sup> and (viii) Kevin Zaideman. Counsel for SCA are diligently investigating Plaintiffs' requests despite them coming in at this late hour, including by reaching out to these eight individuals (all but one of whom are former SCA employees) to identify their counsel and determine their availability to be deposed. Defendants reserve the right to cross-notice.

Plaintiffs below indicate that they may seek more depositions than allowed by Judge Harjani's orders on deposition discovery. *See* Dkt. Nos. 347, 376. If Plaintiffs make such a

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<sup>1</sup> Plaintiffs initially proposed deposing Jennifer Simmons earlier this spring, but then withdrew that request. Plaintiffs did not renew this request until July 24.

request, Defendants will respond at that time.

**B. Plaintiffs' Response**

Plaintiffs' request for additional depositions is consistent with the Court's prior orders and the August 1 deadline. Plaintiffs are diligently reviewing their evidentiary needs in light of ongoing depositions, and reserve the right to request additional depositions. These may include witnesses that Defendants have identified on their initial disclosures but that have not yet been deposed, and 30(b)(6) depositions to address unresolved questions regarding Defendants' employee data and certain Defendants' alleged affirmative defenses. Plaintiffs will make these additional deposition requests prior to the August 1 deadline. If these requests exceed 10 additional depositions (as Plaintiffs expect), Plaintiffs will seek leave of Court.

**IV. Third-Party Discovery**

Defendants' joint motion for a protective order regarding Plaintiffs' subpoenas for employee phone records, including Defendants' joint motion for leave to file a reply in support of their joint motion, are fully briefed. Dkt. Nos. 420, 421, 437–38, 450.

On June 28, 2024, the parties and the Government completed briefing Plaintiffs' motion to compel the Government to produce materials related to its now-concluded criminal investigations against Defendants. Dkt. Nos. 409, 416, 430, 443.

**A. Plaintiffs' Statement Regarding Texas Grand Jury Materials**

On June 3, 2024, Plaintiffs filed a petition in the Northern District of Texas, seeking grand jury transcripts and identification of grand jury exhibits related to the Government's closed criminal investigation against SCA ("Petition"). *United States v. Surgical Care Affiliates, LLC, et al.*, 3:21-CR-00011-L (N.D. Tex.) ("Texas Criminal Action"), Dkt. No. 205. The Texas transcripts and exhibits sought in the Petition were not sought in Plaintiffs' motion to compel against the DOJ filed in this Court on May 28, 2024. *See* Dkt. No. 409. The Texas Petition is

thus separate from and does not affect Plaintiffs' pending motion to compel against the DOJ.

On June 28, 2004, the Northern District of Texas denied the Petition as moot, holding that it lacks jurisdiction, and directed Plaintiffs to seek the materials in this Court. Texas Criminal Action, Dkt. No. 223 at 2, n.\* ("Texas Petition Order"). While the District of Colorado ruled on the merits of Plaintiffs' petition with respect to the grand jury materials arising out of the criminal proceedings there (*United States v. DaVita Inc., et al.*, 1:21-cr-00229-RBJ (D. Colo.), Dkt. No. 304 at 4–6), the Northern District of Texas did not, and instead directed Plaintiffs to pursue the Texas grand jury materials in this Court, pursuant to Federal Rule of Civil Procedure 45: "there is a civil action in the Northern District of Illinois styled *In Re Outpatient Medical Center Employee [] Antitrust Litigation*, No. 1:21-CV-305 from which Plaintiffs can seek the civil discovery requested." Texas Petition Order at 2, n\*.

In light of the Texas Petition Order, Plaintiffs are preparing to file a motion to compel the materials sought by the Texas Petition in this Court. These materials are directly relevant to Plaintiffs' claims, cannot be found elsewhere, and require essentially zero burden on the Government to produce. *See* Petition.

**B. Defendants' Statement Regarding Texas Grand Jury Materials**

If Plaintiffs file an additional motion to compel against the DOJ, Defendants request the opportunity to be heard, as they have been in connection with Plaintiffs' prior motions to compel against the DOJ. *See* Dkt. Nos. 249, 430.

Dated: July 26, 2024

Respectfully submitted,

/s/ Dean M. Harvey

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**CERTIFICATE OF SERVICE**

I, Dean M. Harvey, an attorney, hereby certify that the **Joint Status Report re: Update on Fact Discovery** was electronically filed on July 26, 2024, and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

Dated: July 26, 2024

/s/ Dean M. Harvey  
Dean M. Harvey